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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re Alexander O., a Person
Coming Under the Juvenile
Court Law.

B289746

Los Angeles County
Super. Ct. No. 18CCJP00024A

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,
Plaintiff and Respondent,

v.

EDWIN O.,
Defendant and Appellant.

APPEAL from an order of the Superior Court of
Los Angeles County, Nichelle L. Blackwell, Juvenile Court
Referee. Affirmed.

Paul A. Swiller, under appointment by the Court of Appeal,
for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles,
Assistant County Counsel, Peter Ferrera, Principal Deputy
County Counsel, for Plaintiff and Respondent.

Edwin O. (father) appeals the juvenile court dispositional order removing his son Alexander O. from his custody. Substantial evidence of domestic violence in father's relationships with Alexander's mother, and with his girlfriend at the time of the hearing, supports the removal order. We therefore affirm.

BACKGROUND

Five-year-old Alexander lived with Christina M. (mother) and his maternal great-grandmother (MGM). On November 21, 2017, mother obtained a temporary restraining order against father, protecting her and Alexander from contact with father. Mother's declaration described father's ongoing abusive behavior toward mother, dating back to 2014. On November 18, 2017, father arrived to pick up Alexander for scheduled visitation under a custody order then in place. Father screamed at mother, called her a " 'fucking bitch' " and a horrible mother, and approached her with both fists clenched and his chest puffed out. Afraid father would hit her, mother called the police, who advised her to seek a restraining order. Mother obtained a two-year permanent restraining order on December 12, 2017. The restraining order gave mother sole physical and legal custody of Alexander, and gave father overnight visitation every other weekend, and three weekday visits each week from 3:00 p.m. to 8:00 p.m.

Also on November 21, 2017, Alexander came to the attention of the Los Angeles County Department of Children and Family Services (DCFS) after a referral reported that Alexander had burn marks on his feet following a visit with father. (A medical exam later indicated the marks were not burns, but nonabusive injuries from scraping the sides of a Jacuzzi.) When the social worker arrived, MGM explained father had recently become homeless when he and paternal grandmother were

evicted after their apartment building was sold, and MGGM had allowed him to stay in the garage of her three-bedroom home. A few days earlier, father had involved the police, angry that Alexander was still asleep when father's visitation was scheduled to begin. After the police arrived and asked MGGM " 'why [father] was still living here if we were having so many problems,' " MGGM decided father could no longer stay in the garage. The police spoke to father, and he took his things and left.

MGGM described father and mother's constant conflict over custody and visitation. Months earlier father had told MGGM: " " 'I'm gonna fight her dirty. I want my son.' " " It was awkward when father lived in the garage because he " 'has such an immense hate toward [mother] since he's been with his girlfriend.' " "

Based on information gathered when it investigated the referral, DCFS filed a petition on January 2, 2018, alleging under Welfare and Institutions Code section 300, subdivisions (a) and (b),¹ that father engaged in violent altercations with mother in Alexander's presence, and with his current girlfriend. Mother now had a restraining order against father expiring in December 2019, under which she had full physical and legal custody, and father had unsupervised visitation on Mondays, Wednesdays, and Fridays from 3:00 p.m. until 8:00 p.m., and overnight visits on the first, third, and fifth weekend of each month from Saturday at 9:00 a.m. until Sunday at 6:00 p.m.

¹ All subsequent statutory references are to the Welfare and Institutions Code.

On April 27, 2018 at the jurisdiction/disposition hearing, mother pleaded no contest to an amended version of the petition. The court found jurisdiction over Alexander, sustaining one allegation against father and mother, and a second allegation against father only, under section 300, subdivision (b).

The allegation sustained against father and mother stated that in May 2017, father threw mother to the ground, and in self-defense she threw a picture frame at him. In July 2015, father grabbed mother's arms (leaving scratch marks) and pulled her hair. In other 2015 incidents, father struck mother's head with a glass bottle, and dragged mother down an alley and kicked her in the stomach. Mother was unable to protect Alexander from witnessing the abuse. Father's violent behavior and mother's inability to protect Alexander endangered Alexander's health and safety.

The second allegation sustained against father stated father also had a history of violence with his current girlfriend. In April 2017, father punched his girlfriend in the face, brandished a knife at her, and threatened to harm her. Father and his girlfriend had engaged in violent altercations on prior occasions. Father's violent behavior toward his girlfriend endangered Alexander's physical health and safety and put him at risk of harm.

The court placed Alexander in mother's home, and found by clear and convincing evidence that it was reasonable and necessary to remove Alexander from father's custody. The evidence supporting the sustained counts on which the court based jurisdiction provided "clear and convincing evidence . . . to show there would be a substantial risk of harm if this child were to be placed in the care, custody and control of the father."

Father had a lengthy history of domestic violence with mother, and the violence seemed to extend to father's behavior with his girlfriend. In the jurisdiction/disposition report, the girlfriend reported several incidents of domestic violence by father during their two-year relationship. She fell to her knees during an argument with father; father broke her phone because he was jealous; and father grabbed a knife and threatened her with it, causing her to call the police. Their relationship continued at the time of the hearing. Father needed to engage in domestic violence services before he could have custody. He had completed two domestic violence classes.

Nevertheless, there was no indication that Alexander would be unsafe during visits with father. Although the commissioner had not granted father custody in issuing the restraining order, she had allowed visitation. Over DCFS objection, the juvenile court granted father unmonitored visits as worked out by the parents' counsel, on the first, third, and fifth weekend of the month from 9:00 a.m. on Sunday (with exchange at the police station) until Tuesday morning, when father would drop Alexander off at school. The court declined to order that the girlfriend not be present during visitation, over the objection of counsel for mother and DCFS. The court required father to complete a 52-week domestic violence program, a fatherhood class, and individual counseling.

Father filed a timely notice of appeal.

DISCUSSION

Mother is not a party to this appeal, and father does not appeal the order finding jurisdiction over Alexander. Father appeals only the dispositional order removing Alexander from his custody.

After the juvenile court finds jurisdiction over a child, it must conduct a disposition hearing to determine where the child will live while under the court's supervision. (*In re A.S.* (2011) 202 Cal.App.4th 237, 247.) Section 361, subdivision (d) states:

“A dependent child shall not be taken from the physical custody of his or her parents . . . with whom the child did not reside at the time the petition was initiated, unless the juvenile court finds clear and convincing evidence that there would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the child for the parent [or] guardian . . . to live with the child or otherwise exercise the parent's . . . right to physical custody, and there are no reasonable means by which the child's physical and emotional health can be protected without removing the child from the child's parent's . . . physical custody.”

A removal order must be supported by proof of the parent's “‘inability to provide proper care for the child and proof of a potential detriment to the child if he or she remains with the parent. [Citation.] “The parent need not be dangerous and the minor need not have been actually harmed before removal is appropriate. The focus of the statute is on averting harm to the child.” [Citation.] The court may consider a parent's past conduct as well as present circumstances.’” (*In re Alexander C.* (2017) 18 Cal.App.5th 438, 451.)

We review the court's removal order for substantial evidence. “[O]n appeal from a judgment required to be based

upon clear and convincing evidence, “the clear and convincing test disappears . . . [and] the usual rule of conflicting evidence is applied, giving full effect to the respondent’s evidence, however slight, and disregarding the appellant’s evidence, however strong.” [Citation.]’ ” (*In re Alexzander C.*, *supra*, 18 Cal.App.5th at p. 451.) “We have no power to judge the effect or value of the evidence, to weigh the evidence [or] to consider the credibility of witnesses” (*In re Casey D.* (1999) 70 Cal.App.4th 38, 52.) Father has the burden to demonstrate that no substantial evidence supports the order. (*In re D.B.* (2018) 26 Cal.App.5th 320, 328-329.)

Substantial evidence supports the dispositional order. The evidence that father could not safely have custody of Alexander was the potential detriment to Alexander from father’s long history of domestic violence against mother, the echo of that domestic violence with his current girlfriend, and father’s continuing conflict with mother over visitation and custody. As the court stated, the evidence showed “father is engaged in a power-and-control dynamic where things happen that he does not like, whether it be jealousy or not having responses given the way he wants, he escalates his level of violence towards these women who are in his life, including to the extent of approaching this new girlfriend with a kitchen knife.” True, Alexander had not been harmed, but that is not required; the focus is on averting future harm. The court properly considered father’s past history and his present circumstances, as well as his need to complete a program to understand how domestic violence could harm Alexander emotionally and psychologically. The continuing domestic violence was a sufficient basis to conclude that father

should not have custody. (*In re F.S.* (2016) 243 Cal.App.4th 799, 813.)

Father's argument boils down to this: the court granted him overnight and unsupervised visitation with Alexander, Alexander had not been harmed, and therefore the court should not have denied him custody of Alexander. But " 'we do not consider whether there is evidence from which the dependency court could have drawn a different conclusion but whether there is substantial evidence to support the conclusion that the court did draw.' " (*In re F.S., supra*, 243 Cal.App.4th at p. 813.) Father need not currently be dangerous, and Alexander need not have been harmed, before we give full effect to the evidence of father's pattern of domestic violence against mother and his girlfriend. Substantial evidence supported the dispositional order removing Alexander from father's custody.

DISPOSITION

The dispositional order is affirmed.

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EGERTON, J.

We concur:

EDMON, P. J.

LAVIN, J.